to issue a marriage certificate to any male applicant who does not produce a physician's certificate stating the applicant to be free from acquired venereal diseases, and provides that the physician's fee for such examinations shall not exceed three dollars. *Held*, that the statute violates Article 1, section 1, and Article 1, section 18, of the Wisconsin Constitution. *Peterson* v. *Widule*, (Circuit Ct. of Milwaukee County, Wis.). Not officially reported.

The probability that other states will enact statutes modeled after the one held invalid in the principal case gives rise to a discussion of such statutes from the point of view of the Fourteenth Amendment and similar provisions in state statutes. See NOTES, p. 573.

SALES — TITLE OF GOODS SUBJECT TO BILL OF LADING — BILL OF LADING AS SECURITY FOR ADVANCES; NATURE OF PLEDGEE'S INTEREST — EFFECT OF SURRENDER ON A "TRUST RECEIPT." — The plaintiff bank advanced money on the security of several order bills of lading duly indorsed. Subsequently in return for a receipt it indorsed and delivered the bills to the original owner of the goods to effect a transfer of the goods to a warehouse. The owner sold the non-negotiable warehouse receipts he received on deposit of the goods to the defendant. *Held*, that the plaintiff is entitled to the goods. *B. W. McMahan & Co.* v. *State Nat. Bank*, 160 S. W. 403 (Tex. Civ. App.).

For a discussion of the application of the mercantile view of negotiable documents of title, see NOTES, p. 583.

TITLE OWNERSHIP AND POSSESSION — POSSESSION — CONTROL OF SAFE DEPOSIT COMPANY OVER SECURITIES IN BOX OF DEPOSITOR. — An action was brought by the State of New York to recover a penalty under the Inheritance Tax Act, which provided that no safe-deposit company, "having in possession or under control" securities of a decedent, should transfer them to the legal representative without first notifying the Comptroller. The defendant company had allowed the removal of securities from a safety-deposit box without notice. They controlled access to the vault, but the decedent and his agent held the only keys to the box. It was claimed by the defendant that they did not have the securities "in possession or under control." *Held*, that the defendant is not liable. *People* v. *Mercantile Safe Deposit Co.*, 159 N. Y. App. Div. 98 (N. Y. Sup. Ct., App. Div., 1st Dept.).

The Supreme Court of Illinois under a similar statute recently decided squarely the opposite where the bank had one key and the depositor another, both of which were necessary for access to a safe-deposit box. *National Safe Deposit Co.* v. *Stead*, 250 Ill. 584. The Supreme Court of the United States in reviewing this decision held that the vault owner had sufficient control to prevent the statute from being unconstitutional as an arbitrary attempt to impose the liabilities of possession when none existed. 34 Sup. Ct. Rep. 209. It is difficult to agree with the Illinois court that the bank has actual possession. For complete possession there must be present active dominion. *Sullivan* v. *Sullivan*, 66 N. Y. 37, 41; 6 HARV. L. REV. 443; see article by Albert S. Thayer, 18 HARV. L. REV. 196. The bank may be excluded from such an active dominion by the depositor, but through its own power to exclude has acquired one important element of possession, and has sufficient control to bring it fairly within the obvious purpose of the statute. Just how far such legislation is intended to cover cases where there is a power to exclude is doubtful. The owner of a large office building who rents separate rooms has a power to exclude at the street entrance, but clearly would not be within the statute. It is submitted, however, that in the principal case as well as the Illinois case there was "control" within the meaning of the legislature.

USURY — FORFEITURES — RIGHT OF DIRECTOR TO ENFORCE PENALTY AGAINST CORPORATION. — The plaintiff paid usurious interest on a loan made

to him by the defendant bank while he was on its board of directors and a member of its loan committee. He now sues the bank to recover the statutory penalty for usury. *Held*, that the plaintiff may recover whether or not he participated as director in the loan. *MacRackan* v. *Bank of Columbus*, 80 S. E. 184 (N. C.).

The policy of the usury statutes is such that the borrower in a usurious transaction, although a party to the wrong, is not *in pari delicto* with the lender. *Brown* v. *McIntosh*, 39 N. J. L. 22; *Horner* v. *Nitsch*, 103 Md. 498, 63 Atl. 1052. Accordingly, the borrower may ordinarily have affirmative relief on the contract, and enforce the statutory penalty for usury. *Scott* v. *Leary*, 34 Md. 389; *Bell* v. *Mulholland*, 90 Mo. App. 612; *Tayloe* v. *Parker*, 137 N. C. 418, 49 S. E. 921. This will be true although the debtor is a stockholder in the lending corporation. *Hollowell* v. *Southern Building & Loan Ass'n*, 120 N. C. 286, 26 S. E. 781. But when a director borrows from the corporation, the case is distinguishable because of the director's fiduciary duty to the corporate interests. See *Hill* v. *Frazier*, 22 Pa. 320, 324. It is clear that a borrower who controls the lender's action as its president or cashier will be unable to enforce the penalty. *Gund* v. *Ballard*, 73 Neb. 547, 103 N. W. 309; *Morris* v. *First National Bank of Samson*, 162 Ala. 301, 50 So. 137. A director should likewise be unable to recover, for the enforcement of such a hostile claim against the corporation would seem to be a clear breach of his fiduciary obligation. This should certainly be true in jurisdictions making a transaction between the corporation and a director, as to which he votes as director, always voidable by the corporation irrespective of its fairness. See *Munson* v. *Syracuse, etc. R. Co.*, 103 N. Y. 58, 8 N. E. 355. It should also follow in states upholding the transaction, unless unfair to the corporation, for a contract subjecting a corporation to a penalty at the suit of a director seems grossly unfair. See *Fort Payne Rolling Mill* v. *Hill*, 174 Mass. 224, 54 N. E. 532. In the principal case, however, the majority of the court insists that the language of the usury statute is too strong to admit such an exception, and this view finds much support. *Bank of Cadiz* v. *Slemmons*, 34 Oh. St. 142; *Buquo* v. *Bank of Erin*, 52 S. W. 775 (Tenn.). See NORTH CAROLINA, REVISAL OF 1905, § 1951. But it seems doubtful whether the statutes of usury should be so literally construed as to overrule the well-settled policy of the law which forbids a fiduciary to profit by the breach of his obligation.

WAREHOUSEMEN — WAREHOUSE RECEIPTS — UNAUTHORIZED SUBSTITUTION OF OTHER GOODS: RIGHTS OF PLEDGEE OF THE RECEIPTS AGAINST DEPOSITOR'S TRUSTEE IN BANKRUPTCY. — The depositor of timothy seed in a warehouse received open warehouse receipts, which he transferred to a bank as security for advances. Without authority from the bank, the depositor then substituted other seed of similar quantity and quality for that originally deposited. Later he became bankrupt, and his trustee in bankruptcy claims the substituted goods against the bank. *Held*, that the bank should prevail. *Chicago Title & Trust Co.* v. *National Storage Co.*, 103 N. E. 227 (Ill.).

If the holder of a warehouse receipt has assented to the substitution of other goods for those deposited, title to the substituted goods vests in him immediately. See WILLISTON, SALES, § 154; 6 AM. L. REV. 450, 467. *Cf.* *Bank of Newport* v. *Hirsch*, 59 Ark. 225, 27 S. W. 74. But when the substitution is unauthorized, the receipt holder may insist upon his original title and refuse to accept the new goods. See WILLISTON, SALES, § 442. His subsequent assent to the substitution, however, will be effective at least against the depositor and his representatives. *Brooks, Miller & Co.* v. *Western National Bank*, 16 Wkly. Notes Cas. (Pa.) 298; *Blydenstein* v. *New York Security & Trust Co.*, 67 Fed. 469. The authorities also generally agree with the principal case in sustaining the receipt holder's claim to the new goods against